IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.14843 of 1999

1. P.Prabhu
2. P.M.Imayapathi .. Petitioners

vs.

1. The State of Tamil Nadu
   rep. by its Commissioner and Secy
   to Government Housing and Urban Development
   Department, Fort St. George,Chennai-600 009

2. The Member Secretary
   Chennai Metropolitan Development
   Authority-Thalamuthu Natarajan
   Maligia, Gandhi Irwn Road
   Egmore, Chennai - 600 008 .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in G.O.(D) No.319, Housing and Urban Development Department, dated 3.8.1999 and quash the same.

For petitioner : Mr.A.Muthuraman
For respondents : Mr.D.Srinivasan
Additional Government Pleader for R1
Mr.C.Kathiravan for R2

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O R D E R

Heard Mr.A.Muthuraman the learned counsel appearing for the petitioner and Mr.D.Srinivasan, the learned Additional Government Pleader appearing for the first respondent as well as Mr.C.Kathiravan the learned counsel appearing for the second respondent.

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2. It is stated that the petitioners are joint owners of the property bearing door No.62, Thayar Sahib Street, Chennai. The petitioners have challenged the orders passed by the first respondent confirming the orders of the second respondent refusing to issue the planning permit for additional construction in the said property. The petitioners had proposed to construct the shop and office building in the above mentioned property and had therefore, applied for planning permission. The planning permission had been refused on the ground that the proposal violates the set back requirements around the building.

3. Challenging the order refusing the planning permission, an appeal had been filed by the petitioners before the first respondent. Even though the petitioners had requested for time to send further representation, the first respondent had passed an order, dated 21.1.1985, rejecting the appeal accepting the recommendations made by the second respondent. Thereafter, the petitioners had presented a petition to the Government of Tamil Nadu for reconsideration of the said order. However, by an order, dated 17.6.1987, the Deputy Secretary, Government of Tamil Nadu, Housing and Urban Development Department, had informed the petitioners that no case had been made out to revise the orders. Hence, The petitioners had filed a writ petition before this Court in W.P.No.11822 of 1987, challenging the order passed by the first respondent, on 21.1.1985. By an order, dated 28.1.1997, this Court had allowed the writ petition setting aside the order passed by the first respondent on 21.1.1985 and remanded the matter back to the first respondent for fresh disposal, by giving sufficient opportunity to the petitioners.

4. Pursuant to the order of this Court, dated 28.1.1997, made in W.P.No.11822 of 1987, the first respondent had passed the order in G.O.(D) No.319, Housing & Urban Development(UDV) Department, dated 3.8.1999, which reads as follows:

ORDER:

> Tvl. P.Prabhu and P.M.Imayapathi, C/o Mr.S.Rangan at No.913, Poonamallee High Road, Chennai-84 have preferred an appeal in the reference first read above against the refusal orders of the Member Secretary, Chennai Metropolitan Development Authority on their application for issuance of planning permission for additional construction of shops and office building at No.62, Thayat Sahib Street, Chennai.
>
> 2. The appeal was examined under Section 79 of the Tamil Town and Country Planning Act 1971, based on the remarks of the Member-Secretary,

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Chennai Metropolitan Development Authority in his letter second read above and orders issued in G.O.Rt.No.47, Housing & Urban Development Department, dated 21.1.1985, rejecting the appeal. Against these orders, the appellant obtained direction from High Court in their judgment on 28.1.1997 in W.P.No.11822/87 and W.M.P.No.17308/87 setting aside the orders issued in G.O.Rt.No.47, H&UD Dept. dt. 21.1.85 referred to above and remanding the appeal to the respondent for fresh disposal. In the absence of any further representation for consideration of the case from the appellant after in above judgement, the violations already pointed ot are taken into account.

3. The Government found that the appellant has not submitted his further representation and rectified the violations pointed out by Government in Letter No.16507/UD-I(2)/85-2 dated 10.7.84 so as to satisfy the DCR. The shortfall in the front set back not only affect the free movement but also prevent the overall further development. It is found that the required set back spaces prescribed with reference to the height of the building for the free flow of light and air to this building as well as to the neighbouring building is not provided. Also the non provision of adequate car parking and drive way space and shortage in the width of the road will lead to traffic jam and congestion. The excess FSI and the shortage in the corridor width prescribed will lead to pollution due to excess usage, of existing space sewerage, water supply, Electricity and drainage connections provided for use within the limited surrounding with programmed development. The Government observed the problems involved in the violated construction and find that the violations are beyond the relaxable limit and accordingly they reject the appeal preferred by Tvl.P.Prabhu and P.M.Imayapathi. The orders issued are final and no further appeal shall lie with the Government."

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5. The main contention of the petitioners is that the first respondent had passed the impugned order without giving an opportunity of hearing to the petitioners, as contemplated by this Court in its order, dated 28.1.1997. Therefore, the impugned order of the first respondent, dated 3.8.1999, is invalid in the eye of

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law.

6. At the stage of the hearing of the writ petition, the learned counsel appearing for the petitioners had submitted that it would suffice, if the impugned order of the first respondent, dated 3.8.1999, is set aside and if a direction is issued to the first respondent to dispose of the appeal afresh after giving a reasonable opportunity to the petitioners to represent their case.

7. The learned counsels appearing for the respondents have no objection for such an order being passed by this Court.

8. In view of the submissions made by the learned counsels appearing for the parties concerned, the impugned G.O.(D) No.319, Housing & Urban Development (UDV) Department, dated 3.8.1999, is set aside and the first respondent is directed to dispose of the appeal, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after giving sufficient opportunity to the petitioners to represent their case. The petitioners are directed to furnish all the relevant records relating to their representation, dated 7.8.1984, to the first respondent, along with the copy of this order.

The writ petition is ordered accordingly. No costs. Consequently, connected W.M.P.No.23197 of 1999 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1.
The Commissioner and Secy
to Government
The State of Tamil Nadu
Housing and Urban Development
Department, Fort St. George,Chennai-600 009

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2. The Member Secretary
   Chennai Metropolitan Development
   Authority-Thalamuthu Natarajan
   Maligia, Gandhi Irwn Road
   Egmore, Chennai - 600 008

+ 1 CC To Mr. A.Muthuraman, Advocate SR NO.74111

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